

### **REMARKS/ARGUMENTS**

This is a response to the Office Action dated April 25, 2011. Claims 1-5, 9-12, 15-18, 30-31, and 36-42 were pending in the application. In the Office Action, Claims 1-5, 9-12, 15-18, 30-31, 36-42 were rejected. In this Response, a Joint Declaration Of Vinay Mehta and Awdhoot Vasant Kerkar Under 37 C.F.R. 1.131 has been submitted. Claims 1-5, 9, 12, 16-18, 36-42 remain for consideration.

Applicant submits that Claims 1-5, 9, 12, 16-18, 36-42 are in condition for allowance and requests withdrawal of the rejections in light of the following remarks.

#### **A. Interview**

Applicant would like to thank Examiner Cole for the interview given on June 22, 2011.

#### **B. Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 1-5, 9, 12, 16-18 and 36-42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over WO 9637668 in view of EP 657502.

During the June 22<sup>nd</sup> interview, Applicants' representative and the Examiner discussed the differences between incorporating methyl methacrylate polymers into a thermoplastic polyurethane (EP 657502) as opposed to blending the ethylene methacrylate polymer into a thermoplastic polyurethane; the major difference being the polarity of the polymers.

That is, in EP 657502, the specification teaches that the thermoplastic polyurethane and the polymers disclosed are substantially immiscible and/or do not interact with each other. (See EP 657502, Page 2, lines 36-38). Since EP 657502 teaches that these two components are incompatible, if they were combined alone to form a film, the film would be expected to have (1) a profile showing long lamine (2) restricted permeability and (3) poor mechanical properties. (See EP 657502, Page 2, lines 20-25). To overcome these shortcomings, EP 657502 found that adding a compatibilizer yields a film having better qualities. (See EP 657502, Page 2, lines 26-28). Accordingly, EP 657502 discloses incorporating (1) a thermoplastic polyurethane with (2) an immiscible polymer along with (3) a compatibilizer to achieve a thermoplastic film having desirable performance characteristics. (See EP 657502, Page 4, lines 8-35).

During the interview, Applicants' representative differentiated the above composition from the present invention by pointing out that in the present invention it was found that an ethylene methacrylate polymer has sufficient polarity to be blended with a thermoplastic polyurethane alone and no compatibilizer is needed to bond the components together. This discovery was the exact opposite of the teachings of EP 657502 as EP 657502 teaches away from such a combination.

At the conclusion of the interview, the Examiner agreed with the rationale and asked for a response to be submitted to that effect so that she could fully consider this argument. Accordingly, Applicants have furnished such a response. As discussed above, Applicants believe that EP 657502 teaches away from the claimed invention and respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a).

**C. Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 1-5, 9, 12, 16-18 and 36-42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over WO 9637668 in view of Corzani et al (U.S. Patent App. Pub. No. 2003/0194566).

The Office Action stated that the previous Declaration submitted on 3/29/11 under 37 CFR 1.131 was insufficient to overcome the Corzani reference because it did not include all the inventors.

In response, Applicant submits a Joint Declaration under 37 C.F.R. 1.131 by the inventors Vinay Mehta and Awdhoot Vasant Kerkar of the instant application. As evidenced by the Joint Declaration, weekly reports and lab notes describing the claimed invention were drafted by the inventors of the instant application. These notes were authored prior to March 28, 2003.

Corzani has an effective filing date of March 28, 2003. (See MPEP §§706.02(F)(1), 715 and 2141.01). And as shown by the affidavit, it is clear that the claimed subject matter of the instant application predates the effective filing date of the Corzani cited reference. Therefore, Corzani is not a prior art reference.

Since Corzani is not a prior art reference and WO 9637668 alone is insufficient to reject the pending claims, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a).

### **CONCLUSION**

In view of the aforementioned remarks, the Applicants believe that each of the pending claims is in condition for allowance. If, upon receipt and review of this Response, the Examiner believes that the present application is not in condition for allowance and that changes can be suggested which would place the claims in allowable form, the Examiner is respectfully requested to contact Applicants' undersigned counsel at the number provided below.

The Director is hereby authorized to charge any fees that may be associated with this filing or credit any overpayment of same, to Deposit Account No. 03-1250, under Reference No. FDN-2815, Customer No. 43,309.

Respectfully submitted,

Date: July 22, 2011

/Matthew T. Dennehy/  
Matthew T. Dennehy  
Reg. No. 52,811  
Attorney(s) for Applicant  
Sills Cummis & Gross P.C.  
One Rockefeller Plaza  
New York, New York 10020  
Telephone: 212 643-7000  
Facsimile: 212 643-6500